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CERTIFICATE.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1910.

No. [redacted]230

AMERICAN LAND COMPANY

vs.

LOUIS ZEISS.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

FILED MAY 29, 1909.

(21,699)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 473.

AMERICAN LAND COMPANY

vs.

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ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 19, 1910

1 In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 1647.

AMERICAN LAND COMPANY (a Corporation), Appellant,

vs.

LOUIS ZEISS, Appellee.

Upon Appeal from the United States Circuit Court for the Northern District of California.

Before Gilbert, Ross, and Morrow, Circuit Judges.

The appellant as complainant in the court below brought its bill in equity against the appellee to remove a cloud from its title to real property and to quiet its title thereto. The bill alleges on April 10, 1908, and at all the times prior thereto referred to in the bill, George H. Lent and Mary G. Coggeshall were severally the owners in fee simple of two adjacent lots of land in San Francisco, which lots are described in the bill. The lots and others similarly situated are known as City Slip and Water Lots. Under the provisions of an Act of the Legislature of the State of California, approved March 5, 1851, (Stats. of 1851, page 764) the state leased this property to the City of San Francisco for the term of ninety-nine years. The appellee is alleged to be the owner of the unexpired portion of this lease as successor in interest of the city's right, and to be entitled to the possession thereof until March 26, 1950. The bill all-ges that the appellee has no right whatever other than this right of possession and occupation; that notwithstanding
2 the premises, the appellee claims to be the owner in fee simple of said lands under a judgment and decree of the Superior Court of the State of California, in and for the City and County of San Francisco, made and entered December 19, 1906, in a proceeding entitled "Louis Zeiss, plaintiff, vs. All persons claiming any interest in, or lien upon the real property herein described, or any part thereof, defendants"; that said proceeding was brought under an Act of the Legislature of the State of California entitled "An Act to provide for the establishment and quieting of title to real property in case of the loss or destruction of public records", approved June 16, 1906; that said claim of the appellee under said decree is without right, and said decree is void; that in the complaint in that proceeding the appellee, after properly setting forth the destruction of the records, alleged that he was the owner in fee simple, free of incumbrance, of the lands which are described in the bill in this case, and that he prayed for a decree of the superior court adjudging his title to be as set forth by him; that at the time of filing his complaint he filed his affidavit setting forth the character of the estate, the source of his title, his possession, and stating that he had made

no conveyance of the land, that there were no liens on it, and that he did not know and that he had never been informed of any other person who claimed or may claim any interest or lien upon the property, or any part thereof, adversely to him. The affidavit contained no averment that inquiry of any kind had been made to ascertain whether such adverse claim did exist. It is shown in the bill that in said proceeding under said Act of the Legislature, summons was published in the Law Recorder for the space of two months, and was also posted on the land, and that after the period of publication of the summons the appellee herein obtained a decree of the court as prayed for by him. The bill further alleges that although the appellant's grantors were at all times citizens and residents of California, not seeking to evade but ready to accept service of summons, and easily reached for that purpose, no service
3 was made upon them, nor did they in any way receive notice of the pendancy of the action, nor did they gain any knowledge of the existence of the decree until more than a year after its entry. A demurrer was interposed to the bill in the court below for want of equity, which demurrer was sustained by the court and the bill was dismissed.

The Act of June 16, 1906, provides as follows:

"Section 1. Whenever the public records in the office of a county recorder have been, or shall hereafter be, lost or destroyed, in whole or in any material part, by flood, fire or earthquake, any person who claims an estate of inheritance, or for life in, and who is by himself or his tenant, or other person, holding under him, in the actual and peaceable possession of any real property in such county, may bring and maintain an action *in rem* against all the world, in the superior court for the county in which such real property is situate, to establish his title to such property and to determine all adverse claims thereto. Any number of separate parcels of land claimed by the plaintiff may be included in the same action.

"Sec. 2. The action shall be commenced by the filing of a verified complaint, in which the party so commencing the same shall be named as plaintiff, and the defendants shall be described as 'all persons claiming any interest in, or lien upon the real property herein described, or any part thereof', and shall contain a statement of the facts enumerated in section one of this act, a particular description of such real property, and a specification of the estate, title, or interest of the plaintiff therein.

"Sec. 3. Upon the filing of the complaint, a summons must be issued under the seal of the court, which shall contain the name of the court and county in which the action is brought, the name of the plaintiff and a particular description of the real property involved, and shall be directed to 'all persons claiming any interest in, or lien upon the real property herein described, or any part thereof,' as defendants, and shall be substantially in the
4 following form:

'In the Superior Court of the State of California, in and for the County (or City and County) of ——.'

Action No. —.

—— ——, Plaintiff,

vs.

All Persons Claiming Any Interest in, or Lien upon, the Real Property Herein Described, or Any Part Thereof, Defendants.

The People of the State of California, to all persons claiming any interest in, or lien upon, the real property herein described, or any part thereof, defendants, Greeting:

You are hereby required to appear and answer the complaint of —— ——, plaintiff, filed with the clerk of the above entitled court and county, within three months after the first publication of this summons, and to set forth what interest or lien, if any, you have in or upon that certain real property or any part thereof, situated in the county (or city and county) of ——, State of California, particularly described as follows: (Here insert description.)

And you are hereby notified that, unless you so appear and answer, the plaintiff will apply to the court for the relief demanded in the complaint, to-wit: (Here insert a statement of the relief so demanded.)

Witness my hand and the seal of said court, this — day of ——, A. D. ——.

[SEAL.]

—— ——, *Clerk*.

"Sec. 4. The summons shall be published in a newspaper of general circulation published in the county in which the action is brought. The newspaper in which such publication is to be made shall be designated by an order of the court or a judge thereof to be signed and filed with the clerk. No other order for the publication of the summons shall be necessary, nor shall any affidavit therefor be required, nor need any copy of the complaint be served, except as hereinafter required. The summons shall be published at least once a week for a period of two months, and to each publication thereof shall be appended a memorandum in substance as follows:

'The first publication of this summons was made in —— (here insert name) newspaper on the — day of —— A. D. ——'; (inserting the date).

And if the affidavit provided for in section five of this act discloses the name of any person claiming an interest in the property, or a lien thereon adverse to the plaintiff, that fact, together with the name and address (if given) of said person shall be stated in a memorandum to be appended to the summons in substance as follows:

'The following persons are said to claim an interest in, or lien upon said property adverse to plaintiff', (giving their names and

addresses as above provided). A copy of the summons, together with a copy of the foregoing memoranda, shall be posted in a conspicuous place on each parcel of the property described in the complaint within fifteen days after the first publications of the summons.

"Sec. 5. At the time of filing the complaint, the plaintiff shall file with the same his affidavit, fully and explicitly setting forth and showing (1) the character of his estate, right, title, interest or claim in, and possession of the property, during what period the same has existed and from whom obtained; (2) whether or not he has ever made any conveyance of the property, or any part thereof, or any interest therein, and if so when and to whom; also a statement of any and all subsisting mortgages, deeds of trust, and other liens thereon; (3) that he does not know and has never been informed of any other person who claims or who may claim, any interest in, or lien upon, the property or any part thereof, adversely to him, or, if he does know or has been informed of any such person, then the name and address of such person. If the plaintiff
6 is unable to state any one or more of the matters herein required, he shall set forth and show, fully and explicitly, the reasons for such inability. Such affidavit shall constitute a part of the judgment roll. If the plaintiff be a corporation, the affidavit shall be made by an officer thereof. If the plaintiff be a person under guardianship the affidavit shall be made by his guardian.

"Sec. 6. If the said affidavit discloses the name of any person claiming any interest in, or lien upon, the property adverse to the plaintiff, the summons shall also be personally served upon such person if he can be found within the state, together with a copy of the complaint and a copy of said affidavit during the period of the publications of the summons; and to the copy of the summons delivered to any such person there shall be appended a copy of the memoranda provided for in section four hereof.

If such person resides out of this state a copy of the summons, memoranda, complaint and affidavit shall be within fifteen days after the first publication of the summons deposited in the United States post office, enclosed in a sealed envelope, postage prepaid, addressed to such person at the address given in the affidavit or if no address be given therein, then at the county seat at the county in which the action is brought. If such person resides within this state and could not with due diligence be found within the state, within the period of the publication of the summons, then said copies aforesaid shall be mailed to him as above provided forthwith upon the expiration of said period of publication.

"Sec. 7. Upon the completion of the publication and posting of the summons and its service upon and mailing to the person, if any, upon whom it is hereby directed to be so specially served the court shall have full and complete jurisdiction over the plaintiff and the said property and of the person of every one claiming any estate, right, title or interest, in or to, or lien upon, said property, or any part thereof, and shall be deemed to have obtained the possession and control of said property for the purposes of the
7 action, and shall have full and complete jurisdiction to render the judgment therein which is provided for in this act.

Sec. 8. At any time within three months from the first publication of the summons, or within such further time, not exceeding thirty days, as the court may, for good cause, grant, any person having or claiming any estate, right, title or interest, in or to, or lien upon, said property, or any part thereof, may appear and make himself a party to the action by pleading to the complaint. All answers must be verified and must specifically set forth the estate, right, title, interest, or lien, *do* claimed.

"Sec. 9. The plaintiff must, at the time of filing the complaint, and every defendant claiming any affirmative relief must, at the time of filing his answer, record in the office of the recorder of the county in which the property is situated, a notice of the pendency of the action containing the object of the action or defense, and a particular description of the property affected thereby; and the recorder shall record the same in a book devoted exclusively to the recordation of such notices and shall enter, upon a map or plat of the parcels of land, to be kept by him for that purpose, on that part of the map or plat representing the parcel or parcels so described a reference to the date of the filing of such notice and, when recorded, to the book and page of the record thereof.

"Sec. 10. No judgment in any such action shall be given by default; but the court must require proof of the facts alleged in the complaint and other pleadings.

"Sec. 11. The judgment shall ascertain and determine all estates, rights, titles, interests and claims in and to said property and every part thereof, whether the same be legal or equitable, present or future, vested or contingent, or whether the same consist of mortgages or liens of any description and shall be binding and conclusive upon every person who, at the time of the commencement of the action, had or claimed any estate, right, title or interest in or to said property, or any part thereof, and upon every person claiming under him by title subsequent to the commencement of the action. A certified copy of the judgment in such action shall be recorded in the office of the recorder of the county in which said action was commenced, and any party or the successor in interest of any party to said action may, at his option, file for record in the office of the recorder of such county the entire judgment roll in said action."

Upon the foregoing statement, in view of the fact that the interests of very many persons in real estate in the City of San Francisco are affected by the Act of the Legislature above referred to, and it is of the utmost importance that the question of the validity of that Act should be speedily and authoritatively determined, this court desires the instruction of the Supreme Court upon the question which it hereby certifies for decision, whether the Act of the Legislature of the State of California providing for the establishment and quieting of title to real property in case of the loss or destruction of public records, approved June 16, 1906, (Statutes of California 1906, page 78) is violative of the Fourteenth Amendment to the Constitution of the United States, and whether by virtue of the decree rendered by the said Superior Court of the City and County of San

Francisco the appellant has been deprived of its property without due process of law.

Dated this tenth day of May, 1909.

WM. B. GILBERT,
ERSKINE M. ROSS,
WM. W. MORROW,
Judges of the United States Circuit Court of Appeals for the Ninth Circuit.

9 (Endorsed:) Certificate of United States Circuit Court of Appeals for the Ninth Circuit under Section 6 of the Act of March 3, 1891 Certifying a Certain Question to the Supreme Court of the United States for Decision. Filed May 10, 1909, F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit, By Meredith Sawyer, Deputy Clerk.

10 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1647.

AMERICAN LAND COMPANY (a Corporation), Appellant,
vs.
LOUIS ZEISS, Appellee.

Clerk's Certificate to Certificate of United States Circuit Court of Appeals under Section 6 of the Act of March 3, 1891.

I, Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing nine (9) pages, numbered from one (1) to nine (9), both inclusive, to be a full, true and correct copy of a "Certificate of United States Circuit Court of Appeals for the Ninth Circuit under Section 6 of the Act of March 3, 1891, Certifying a Certain Question to the Supreme Court of the United States for Decision," filed on the tenth day of May, A. D. 1909, in the cause entitled The American Land Company (a Corporation), Appellant, vs. Louis Zeiss, Appellee, No. 1647, as the original thereof remains on file and of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 10th day of May, A. D. 1909.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk*.
By MEREDITH SAWYER,
Deputy Clerk.

Endorsed on cover: File No. 21,699. U. S. Circuit Court Appeals, 9th Circuit. Term No. 473. American Land Company vs. Louis Zeiss. (Certificate.) Filed May 29th, 1909. File No. 21,699.

Office Supreme Court, U.
FILED.
FEB 23 1910
JAMES H. McKENNEY,

~~No. 470~~

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1909.

AMERICAN LAND COMPANY
(a corporation),
Complainant and Appellant,
vs.
LOUIS ZEISS,
Defendant and Appellee.

230

MOTION AND NOTICE OF MOTION.

CHARLES PAGE,
EDWARD J. McCUTCHEN,
SAMUEL KNIGHT,
Counsel for Complainant and Appellant.

Filed this.....day of February, 1910.

JAMES H. McKENNEY, Clerk.

By.....Deputy Clerk.

PERNAU PUBLISHING CO., SAN FRANCISCO.

POOR

No. 473

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1909.

AMERICAN LAND COMPANY
(a corporation),
Complainant and Appellant,
vs.
LOUIS ZEISS,
Defendant and Appellee.

Motion.

Comes now American Land Company above named, and moves the court to advance the cause for a hearing upon the certificate of the Circuit Court of Appeals for the Ninth Circuit, for the reason that there is involved the validity of the Act of the Legislature of the State of California providing for the establishment and quieting of title to real property in case of the loss or destruction of public records, and that as stated by said Circuit

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Court of Appeals in its said certificate, "the interests of "very many persons in real estate in the City of San "Francisco are affected by the Act of the Legislature "above referred to and it is of the utmost importance "that the question of the validity of that Act should be "speedily and authoritatively determined".

And in case said motion to advance the cause for hearing be denied, said American Land Company further moves the court to dismiss the said certificate for want of jurisdiction thereof for the reasons:

1. That the cause is not one in which the judgment of the said Circuit Court of Appeals is final.

2. That the said certificate does not show that instruction is desired for the proper decision of the questions certified.

3. That the said certificate, in effect, presents the whole case for decision.

Presented herewith is a certified copy of the record in the above entitled cause.

CHARLES PAGE,
EDWARD J. MCCUTCHEN,
SAMUEL KNIGHT,
Counsel for Complainant and Appellant.

No. 473

In the Supreme Court of the United States

October Term 1909.

AMERICAN LAND COMPANY (a corporation),
Complainant and Appellant,
vs.
LOUIS ZEISS,
Defendant and Appellee.

Notice of Motion.

To Otto tum Suden,
Solicitor for Defendant and Appellee:

Please take notice, that on the 21st day of March, 1910, the motions of which the foregoing is a copy will be submitted to the Supreme Court of the United States for the decision of the court thereon. Herewith delivered to you is a copy of the brief in support of said motions and a copy of a certified copy of the record in said cause.

Charles Page,
Edward J. McCutchen,
Samuel Knight,
Counsel for Complainant and Appellant.

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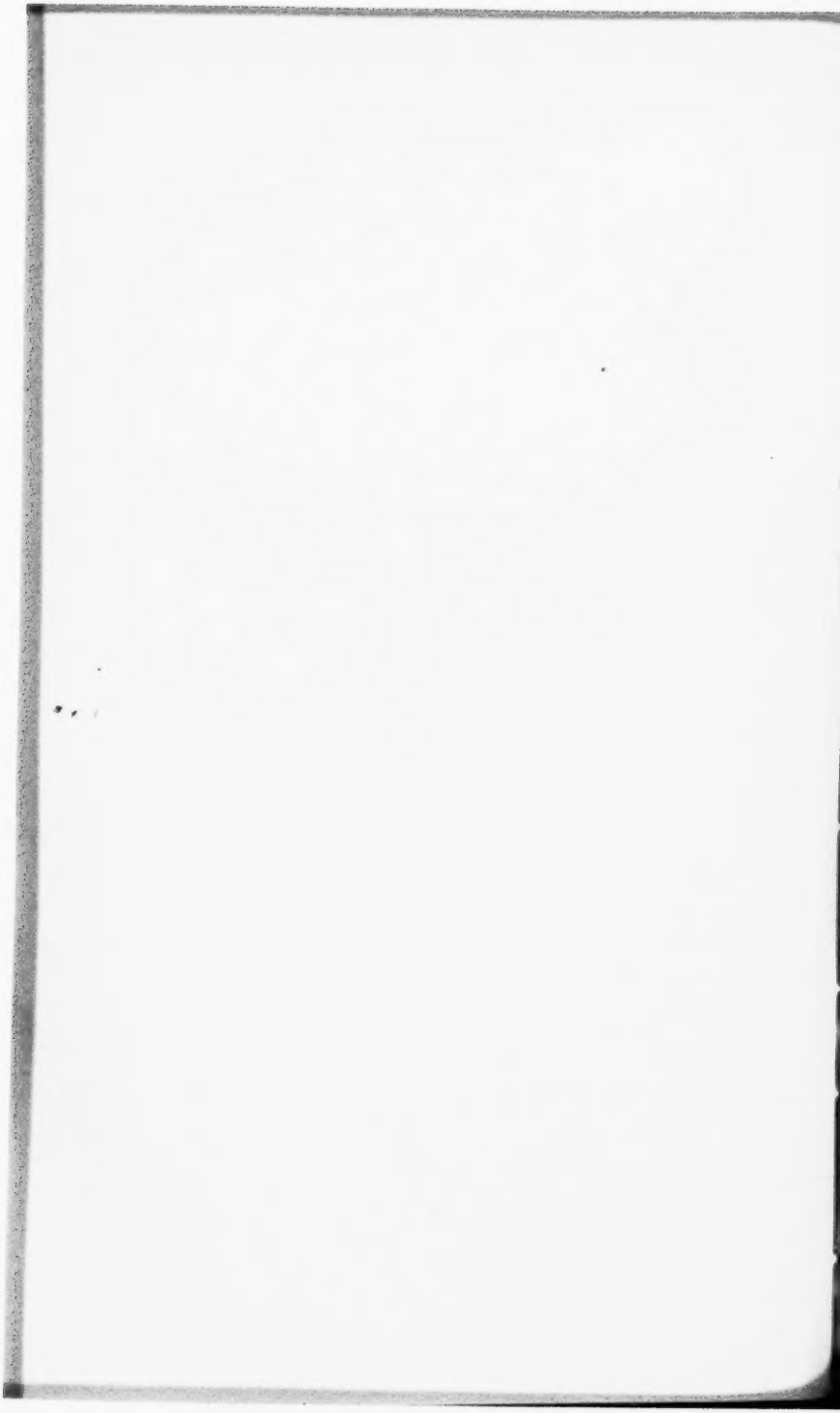

The foregoing notice is hereby accepted, and delivery of a copy thereof, and of the brief in support of the said motions and of a certified copy of the transcript of record in said cause, are hereby acknowledged this ~~22nd~~ 16th day of February, 1910, at San Francisco, California.

OTTO TUM SUDEN,
Solicitor for Defendant and Appellee.

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